

## Appendix E

## **APPENDIX E**

### **GUARANTEE AGREEMENT**

This GUARANTEE AGREEMENT, dated as of [\_\_\_\_\_], 200 (this “Guarantee”), is made by Monsanto Company, a corporation organized and existing under the laws of the State of Delaware (“Guarantor”), to and for the benefit of the United States Environmental Protection Agency, an agency of the federal government of the United States of America (“EPA”). This Guarantee is made on behalf of Pharmacia Corporation (“Settling Defendant”), which is an indemnitee of Guarantor.

#### **RECITALS**

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. (“CERCLA”), Settling Defendant has entered into a Consent Decree with EPA, approved by the United States District Court for the District of Massachusetts on [\_\_\_\_\_], 2007, Docket No. \_\_\_\_\_ (the “Consent Decree”), for certain environmental remediation work to be performed at the Industrial Superfund Site, Second Operable Unit (the “Site”) in the vicinity of Woburn, MA ;

WHEREAS, Section XIII of the Consent Decree requires that Settling Defendant provide financial assurance to EPA that funds or other resources will be available as and when needed to ensure completion of the work required to be conducted by Settling Defendant under the Consent Decree;

WHEREAS, in order to provide part of such financial assurance required by the Consent Decree, Settling Defendant has agreed to provide EPA with a guarantee, issued by Guarantor, of Settling Defendant’s obligations arising under the Consent Decree, all as set forth more fully in this Guarantee;

WHEREAS, Guarantor has indemnified Settling Defendant with respect to the Site and the Guarantor will receive substantial benefits from the agreements made by and between EPA and Settling Defendant as set forth in the Consent Decree; and

WHEREAS, Guarantor has agreed to, among other things, guarantee payment and performance in full of the Guaranteed Obligations (as hereinafter defined) and undertake such other commitments to EPA or for EPA’s benefit as set forth in this Guarantee.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the promises contained herein, and to induce EPA to enter into the Consent Decree and to settle with Settling Defendant under CERCLA as contemplated thereby, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby agrees with EPA as follows:

## ARTICLE I. DEFINITIONS

1.1 Defined Terms. The following terms (whether or not underscored) when used in this Guarantee, including its preamble and recitals, shall have the following meanings:

“Affiliate” means, when used with respect to a specified entity, another entity that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the entity specified.

“Annual Audited Financial Statements” means an entity’s annual audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Procedures.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership or control of voting securities, partnership interests or other equity interests, by contract, or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.

“EPA” has the meaning given in the preamble to this Guarantee.

“Guaranteed Obligations” means and includes all obligations and liabilities, howsoever arising, owed by Settling Defendant to EPA of every kind and description (whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Consent Decree.

“Guarantor” has the meaning given in the preamble to this Guarantee.

“Guarantee” has the meaning given in the preamble to this Guarantee.

“Maximum Amount” shall mean twelve million eight hundred fifty thousand U.S. dollars (\$12,850,000).

“Site” has the meaning given in the preamble to this Guarantee.

1.2 General Definitions. Unless otherwise defined herein or unless the context otherwise requires, capitalized terms used in this Guarantee, including its preamble and recitals, have the meanings provided in the Consent Decree.

## ARTICLE II. GUARANTEE

2.1 Guarantee.

(a) Guarantor, as primary obligor and not merely as surety, hereby unconditionally and irrevocably guarantees to EPA the prompt payment in full and the prompt performance in full of the Guaranteed Obligations; provided however, that, notwithstanding

anything herein to the contrary, the aggregate amount of: (i) payments made by Guarantor hereunder to third party vendors in connection with the performance of the Guaranteed Obligations; (ii) payments made to EPA pursuant to subsections 2.1(b) or 2.1(c) hereof; and (iii) costs incurred by Guarantor in performing the Guaranteed Obligations directly, shall in no event exceed the Maximum Amount.

(b) Subject to the provisions of subsection 2.1(a) hereof, Guarantor agrees that if for any reason Settling Defendant shall fail to pay or perform, as the case may be, when due any of the Guaranteed Obligations, Guarantor shall promptly pay or perform, as the case may be, the same forthwith on the date such payment or performance of such Guaranteed Obligation is due or required, without regard to any exercise or non-exercise by Guarantor, Settling Defendant, or EPA of any right, remedy, power or privilege under or in respect of the Consent Decree, and that in the case of any extension of time of the payment, performance, or renewal of any of the Guaranteed Obligations, the same will be promptly paid or performed, as the case may be, in full when due in accordance with the terms of such extension or renewal.

(c) Without limiting the foregoing, Guarantor acknowledges and agrees that, subject to the provisions of subsection 2.1(a) hereof, upon the occurrence and during the continuance of a "Work Takeover" as specified in Section [\_\_\_\_] of the Consent Decree, at the election of EPA, Guarantor shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

## 2.2 Obligations Absolute and Unconditional.

(a) The obligations of Guarantor hereunder are primary obligations of Guarantor and constitute an absolute, unconditional, continuing and irrevocable guarantee of payment and performance of the Guaranteed Obligations and the other obligations of Guarantor hereunder and not of collectibility, and are in no way conditioned on or contingent upon any attempt to enforce in whole or in part Settling Defendant's liabilities and obligations to EPA. Subject to the provisions of subsection 2.1(a) hereof, each failure by Guarantor to pay or perform, as the case may be, a Guaranteed Obligation or any other obligation hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(b) Subject to the provisions of subsection 2.1(a) hereof, EPA may, at any time and from time to time (whether or not after revocation or termination of this Guarantee) without the consent of or notice to Guarantor, except such notice as may be required by the Consent Decree or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(i) change the manner, place and terms of payment or performance of, or renew or alter, any Guaranteed Obligation or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or in any manner modify, amend or supplement the terms of the Consent Decree

or any documents, instruments or agreements executed in connection therewith, in each case with the consent of Settling Defendant (in each case, as and to the extent required by the Consent Decree), and the agreements and guarantees herein made shall apply to the Guaranteed Obligations or such other obligations as changed, extended, renewed, modified, amended, supplemented or altered in any manner;

(ii) exercise or refrain from exercising any rights against Settling Defendant or others (including Guarantor) or otherwise act or refrain from acting;

(iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder;

(iv) settle or compromise any Guaranteed Obligations or any obligations and liabilities incurred directly or indirectly in respect thereof;

(v) consent to or waive any breach of, or any act, omission or default under, the Consent Decree or otherwise amend, modify or supplement (with the consent of Settling Defendant, as and to the extent required by the Consent Decree) the Consent Decree or any of such other instruments or agreements; and/or

(viii) act or fail to act in any manner referred to in this Guarantee which may deprive Guarantor of its right to subrogation against Settling Defendant to recover full indemnity for any payments or performances made pursuant to this Guarantee or of its right of contribution against any other party.

(c) No invalidity, irregularity or unenforceability of the Guaranteed Obligations or invalidity, irregularity, unenforceability or non-perfection of any collateral therefor, shall affect, impair or be a defense to this Guarantee, which is a primary obligation of Guarantor.

(d) This is a continuing Guarantee and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 2.2(a) above, this Guarantee shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by EPA of written notice of revocation signed by Guarantor. To the extent permitted by applicable law, no revocation or termination hereof shall affect, in any manner, rights arising under this Guarantee with respect to Guaranteed Obligations arising prior to receipt by EPA of written notice of such revocation or termination. Any such revocation or termination without EPA's prior written consent shall be deemed to be a violation of the Consent Decree.

ARTICLE III.  
REPRESENTATIONS AND WARRANTIES

3.1 Guarantor Representations and Warranties. Guarantor represents and warrants to and in favor of EPA, as of the date of this Guarantee, that:

3.1.1 Existence. Guarantor is duly organized and validly existing under the laws of the jurisdiction of its incorporation and is qualified to do business in such jurisdiction and in each other jurisdiction in which the conduct of its business requires such qualification.

3.1.2 Power and Authorization. Guarantor has full power and authority to enter into and execute this Guarantee. This Guarantee has been duly authorized, executed and delivered by Guarantor.

3.1.3 No Conflict. The execution, delivery and performance by Guarantor of this Guarantee and the execution, delivery, and performance by Settling Defendant of the Consent Decree do not and will not (a) violate any provision of (i) any legal requirement applicable to Guarantor, (ii) the organizational and other corporate governance documents of Guarantor or (iii) any order, judgment or decree of any court or agency or governmental instrumentality binding on Guarantor, (b) conflict with, result in a breach of, or constitute a default under any material contractual obligation of Guarantor, (c) result in or require the creation or imposition of any lien upon any of the properties or assets of Guarantor, or (d) require any approval or consent of any person or entity, except for such approvals or consents which will be obtained on or before the date of this Guarantee and which have been disclosed in writing to EPA.

3.1.4 Enforceable Obligations. This Guarantee constitutes a legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally.

3.1.5 Compliance with Law; Fraud.

(a) Guarantor (i) is not in violation of any applicable legal requirements in any material respect and (ii) is not subject to or in default in any material respect with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, in the case of either (i) or (ii) which would have a material adverse effect on the ability of Guarantor to perform its obligations under this Guarantee.

(b) Guarantor is not executing this Guarantee with any intention to hinder, delay or defraud any present or future creditor or creditors of Guarantor.

3.1.6 Relationship To Settling Defendant. Guarantor has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant.

3.1.7 No Bankruptcy Filing. Guarantor is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and Guarantor has no knowledge of any person contemplating the filing of any such petition against it.

#### ARTICLE IV. COVENANTS

Guarantor hereby covenants and agrees for the benefit of EPA, until this Guarantee is terminated pursuant to Section 6.16, as follows:

4.1 Maintenance of Corporate Existence. Guarantor shall maintain and preserve its existence and all material rights, privileges and franchises necessary in the normal conduct of its business. Guarantor shall notify EPA in writing within 60 days after any change in its name or place of business or chief executive office, or change in its type of organization or jurisdiction of organization.

4.2 Compliance with Laws. Guarantor shall promptly comply, or cause compliance, in all material respects with all legal requirements to the extent any noncompliance with such legal requirements could have a material adverse effect on the ability of Guarantor to perform and discharge its obligations under this Guarantee.

4.3 Notice of Bankruptcy or Insolvency, Etc. Guarantor shall notify EPA within 10 days after the occurrence of any of the following: filing by the Guarantor of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; Guarantor's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; Guarantor's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; Guarantor's making a general assignment for the benefit of creditors; or Guarantor's taking any corporate action for the purpose of effecting any of the foregoing

4.4 Further Assurances. Guarantor shall promptly provide EPA with such information and other documents related to this Guarantee and the Guaranteed Obligations that EPA may reasonably request.

4.5 Compliance with Financial Measures. Guarantor shall at all times during the term of this Guarantee comply with and satisfy the financial measures and conditions set forth in either Exhibit A or Exhibit B attached hereto. Guarantor shall also notify EPA immediately if, at any time during the term hereof, Guarantor fails or has reason to believe that it may fail any of the financial measures set forth in Exhibit A or Exhibit B, as the case may be.

4.6 Submission of Documents. For so long as this Guarantee is in effect, contemporaneously with the filing of its Annual Report on Form 10K with the Securities and Exchange Commission, Guarantor shall submit to EPA:

(a) a letter signed by Guarantor's Chief Financial Officer certifying Guarantor's compliance with the financial conditions and measures set forth in either Exhibit A or Exhibit B, which letter shall be substantially in the form of Exhibit C attached hereto; and

(b) a copy of Guarantor's audited financial statements for its latest completed fiscal year, and a copy of the Guarantor's independent certified public accountant's report on examination of such financial statements, which report on examination shall be unqualified or, if qualified, shall have been approved in writing by EPA; and

(c) a special report from Guarantor's independent certified public accountant to Guarantor attesting to Guarantor's compliance with the financial conditions and measures set forth in either Exhibit A or Exhibit B which special report shall be substantially in the form of Exhibit D attached hereto.

#### ARTICLE V. SUBROGATION; ETC.

5.1 Waiver. Subject to the provisions of subsection 2.1(a) hereof, Guarantor hereby unconditionally and irrevocably waives and relinquishes, to the maximum extent permitted by applicable legal requirements, all rights and remedies accorded to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including:

(a) any right to require EPA to proceed against Settling Defendant or any other person or to pursue any other remedy in EPA's power before proceeding against Guarantor;

(b) any defense that may arise by reason of the incapacity, lack of power or authority, dissolution, merger, or termination of Guarantor, Settling Defendant, or any other person or the failure of EPA to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Guarantor or Settling Defendant, or any other person;

(c) promptness, diligence, demand, presentment, protest and notice of any kind, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Settling Defendant or EPA;

(d) as to EPA, any defense based upon any settlement entered into by EPA with other potentially responsible parties at the Site that provide such parties with protection from contribution claims pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2);

(e) any defense based on any offset against any amounts which may be owed by any person to Guarantor for any reason whatsoever;

(f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Settling Defendant or the failure by Settling Defendant to do any act or



thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Consent Decree;

(g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(h) any duty on the part of EPA to disclose to Guarantor any facts EPA may now or hereafter know about Settling Defendant or the Site, regardless of whether EPA has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Settling Defendant and of all circumstances bearing on the risk of non-payment or non-performance of any Guaranteed Obligation;

(i) any defense, setoff or counterclaim which may at any time be available to or asserted by Settling Defendant against EPA under the Consent Decree;

(j) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Consent Decree, or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Consent Decree;

(k) any right to assert the bankruptcy or insolvency of Settling Defendant or any other person as a defense hereunder or as the basis for rescission hereof and any defense arising because of EPA's institution of any proceeding under the Federal Bankruptcy Code; and

(l) any other circumstance (including any statute of limitations), any act or omission by Settling Defendant, or any existence of or reliance on any representation by Settling Defendant or EPA that might otherwise constitute a defense available to, or discharge of, any guarantor or surety.

## 5.2 Bankruptcy.

(a) The obligations of Guarantor under this Guarantee shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of Settling Defendant or any Affiliate thereof, or by any defense which Settling Defendant or any Affiliate thereof may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Guarantor hereby irrevocably waives, to the extent it may do so under applicable legal requirements, any protection against enforcement of this Guarantee to which it may be entitled under the Federal Bankruptcy Code or equivalent provisions of the laws or regulations of any other jurisdiction with respect to any proceedings, or any successor provision of law of similar import, in the event of any bankruptcy event with respect to Settling

Defendant. Specifically, in the event that the trustee (or similar official) in a bankruptcy event with respect to Settling Defendant or the debtor-in-possession takes any action (including the institution of any action, suit or other proceeding for the purpose of enforcing the rights of Settling Defendant under this Guarantee), Guarantor shall not assert any defense, claim or counterclaim denying liability hereunder on the basis that this Guarantee or the Consent Decree is an executory contract or a “financial accommodation” that cannot be assumed, assigned or enforced or on any other theory directly or indirectly based on the Federal Bankruptcy Code, or equivalent provisions of the law or regulations of any other jurisdiction with respect to any proceedings or any successor provision of law of similar import. If a bankruptcy event with respect to Settling Defendant shall occur, Guarantor agrees, after the occurrence of such bankruptcy event, to reconfirm in writing, to the extent permitted by applicable legal requirements and at EPA’s written request, its pre-petition waiver of any protection to which it may be entitled under the Federal Bankruptcy Code or equivalent provisions of the laws or regulations of any other jurisdiction with respect to proceedings and, to give effect to such waiver, Guarantor consents to the assumption and enforcement of each provision of this Guarantee by the debtor-in-possession or Settling Defendant’s trustee in bankruptcy, as the case may be.

5.3 Reinstatement. This Guarantee and the obligations of Guarantor hereunder shall continue to be effective or be automatically reinstated, as the case may be, if and to the extent that for any reason any payment or performance by or on behalf of Guarantor in respect of the Guaranteed Obligations is rescinded or otherwise restored to Guarantor or Settling Defendant, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as if such payment or performance had not been made, and Guarantor agrees that it will indemnify EPA on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by EPA in connection with any such rescission or restoration.

## ARTICLE VI. MISCELLANEOUS

6.1 Obligations Secured. Without limiting the generality of the foregoing, this Guarantee secures the payment and performance when due of all Guaranteed Obligations. If, notwithstanding the representation and warranty set forth in Section 3.1.4 or anything to the contrary herein, enforcement of the liability of Guarantor under this Guarantee for the full amount of the Guaranteed Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Guarantor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

6.2 Successions or Assignments. This Guarantee is binding upon Guarantor and its successors and permitted assigns. Guarantor may not assign any of its obligations hereunder without the prior written consent of EPA (and any purported assignment in violation of this Section shall be void).

6.3 Other Waivers. No delay or omission on the part of EPA in exercising any of its rights (including those hereunder) and no partial or single exercise thereof and no

action or non-action by EPA, with or without notice to Guarantor, Settling Defendant, or any other person, shall constitute a waiver of any rights or shall affect or impair this Guarantee.

6.4 Headings. The headings in this Guarantee are for convenience of reference only and shall not constitute a part of this Guarantee for any other purpose or be given any substantive effect.

6.5 Remedies Cumulative. Each and every right and remedy of EPA hereunder shall be cumulative and shall be in addition to any other right or remedy given hereunder or under the Consent Decree, or now or hereafter existing at law or in equity.

6.6 Severability. Any provision of this Guarantee that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.7 Amendments. This Guarantee may be amended, waived or otherwise modified only with the written consent of the parties hereto, the written consent of EPA and otherwise in accordance with the terms of the Consent Decree.

6.8 Jurisdiction. Guarantor agrees that any legal action or proceeding by or against Guarantor or with respect to or arising out of this Guarantee may be brought by the United States in or removed to [INSERT DISTRICT COURT ENTERING CONSENT DECREE.] By execution and delivery of this Guarantee, Guarantor accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court. Guarantor irrevocably consents to the service of process out of the aforementioned court in any manner permitted by law. Any such process or summons in connection with any such action or proceeding may also be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder. Guarantor hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Guarantee or the Consent Decree brought before the foregoing court on the basis of *forum non-conveniens*. Nothing herein shall affect the right of EPA to bring legal action or proceedings in any other competent jurisdiction.

6.9 Governing Law. This Guarantee and the rights and obligations of EPA and Guarantor shall be governed by, and construed in accordance with, the law of the State of [\_\_\_\_\_] without reference to principles of conflicts of law.

6.10 Integration of Terms. This Guarantee, together with the Consent Decree, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

6.11 Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to EPA: EPA Regional Administrator or Regional Superfund Director for  
EPA Region [\_\_\_\_] (or any of their designees)  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: [ORC Contact; RPM]  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile or (e) if sent via other electronic means (including electronic mail). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that (i) if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender, and (ii) with respect to any notice given via facsimile or other electronic means, the sender of such message shall promptly provide the addressee with an original copy of such notice by any of the means specified in clauses (a), (b) or (c) above. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving five days' notice to the other parties in the manner set forth above.

#### 6.12 Collection Expenses.

(a) Without regard to any limitation set forth in this Guarantee, if EPA is required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to EPA upon

demand therefore, all reasonable attorneys' fees and all other costs and expenses incurred by EPA in enforcing this Guarantee (and such fees, costs and expenses shall be deemed to be part of the Guaranteed Obligations) provided that, if a legal action initiated in connection the pursuit of such remedy is adjudicated in favor of Guarantor, Guarantor shall have no obligation pursuant to this section 6.12..

6.13 Counterparts. This Guarantee and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same agreement.

6.14 Limitations on Liability. No claim shall be made by Guarantor against EPA or any of its employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Guarantee or the Consent Decree or any act or omission or event occurring in connection therewith; and Guarantor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in their favor.

6.15 Time. Time is of the essence of this Guarantee.

6.16 Termination. Subject to Section 5.4, this Guarantee and all of the obligations of Guarantor hereunder shall terminate upon the earlier of (a) payment and performance in full of all Guaranteed Obligations in accordance with the Consent Decree and (b) the substitution of a different financial assurance mechanism in accordance with Section [ ] of the Consent Decree as consent to in writing by EPA. Unless earlier terminated pursuant to the foregoing sentence, this Guarantee shall survive any foreclosure proceedings instituted, commenced, or completed against Settling Defendant.

6.17 Consent Decree. Guarantor acknowledges that it has been provided with a copy of the Consent Decree and has read and is familiar with the provisions of the Consent Decree.

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IN WITNESS WHEREOF, Guarantor, by its authorized representative duly authorized, intending to be legally bound, have caused this Guarantee to be duly executed and delivered as of the date first above written.

Monsanto Company,  
a Delaware corporation,  
as Guarantor

By: \_\_\_\_\_  
Name:  
Title:

[NOTARY BLOCK]

## **EXHIBIT A**

### **Section 4.5(a) Financial Conditions**

As calculated from the data contained in Guarantor's Annual Audited Financial Statement, the Guarantor must:

- (A) Satisfy two of the following three ratios: (1) a ratio of total liabilities to Net Worth less than 2.0; (2) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and (3) a ratio of current assets to current liabilities greater than 1.5; and
- (B) Have a Net Working Capital and Tangible Net Worth each at least six times the Total Value of Environmental Obligations; and
- (C) Have a Tangible Net Worth of at least \$10 million; and
- (D) Have assets located in the United States amounting to at least 90 percent of total assets or at least six times the Total Value of Environmental Obligations.

#### **Defined Terms for Exhibit A and Exhibit B**

"Net Working Capital" means current assets minus current liabilities.

"Net Worth" means total assets minus total liabilities.

"Tangible Net Worth" means the value of tangible assets included in the calculation of Net Worth; this value would not include the value of intangibles such as goodwill and rights to patents or royalties.

"Total Value of Environmental Obligations" means the sum of:

(a) the dollar amount of financial assurance required by Paragraph [\_\_\_\_] of the Consent Decree [or the relevant portion if multiple financial assurance mechanisms are being used];

(b) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for CERCLA settlements other than that embodied in the Consent Decree; and

(c) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for purposes of any facility regulated under federal environmental programs other than CERCLA, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761.

## **EXHIBIT B**

### **Section 4.5(b) Financial Conditions**

The Guarantor must have:

- (A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
- (B) Tangible Net Worth at least six times the Total Value of Environmental Obligations; and
- (C) Tangible Net Worth of at least \$10 million; and
- (D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the Total Value of Environmental Obligations.

### **Defined Terms for Exhibit A and Exhibit B**

**“Net Working Capital”** means current assets minus current liabilities.

**“Net Worth”** means total assets minus total liabilities.

**“Tangible Net Worth”** means the value of tangible assets included in the calculation of Net Worth; this value would not include the value of intangibles such as goodwill and rights to patents or royalties.

**“Total Value of Environmental Obligations”** means the sum of:

(a) the dollar amount of financial assurance required by Paragraph [\_\_\_\_] of the Consent Decree [or the relevant portion if multiple financial assurance mechanisms are being used];

(b) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for CERCLA settlements other than that embodied in the Consent Decree; and

(c) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for purposes of any facility regulated under federal environmental programs other than CERCLA, including but not limited to hazardous waste Treatment, Storage, and Disposal (“TSD”) facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill (“MSWLF”) facilities under 40 CFR part 258, Underground Injection Control (“UIC”) facilities under 40 CFR part 144, Underground Storage Tank (“UST”) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (“PCB”) storage facilities under 40 CFR part 761.



## **EXHIBIT C**

### **Sample CFO Letter (for Test Alternative 1: Financial Ratios)**

[Guarantor Letterhead]

[Address Block]

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear [\_\_\_\_\_]:

I am the chief financial officer of [name and address of Guarantor] (the “Company”). The Company [is the owner of a direct or indirect controlling interest in] [has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with] [name of Settling Defendant] (the “Settling Defendant”). This letter is in support of the Settling Defendant’s use of a corporate guarantee (the “Guarantee”), to be provided by the Company, to demonstrate financial assurance for the obligations of the Settling Defendant under that certain [Consent Decree (the “Consent Decree”)], dated \_\_\_\_\_, \_\_\_\_\_, Docket No. [\_\_\_\_\_], between the Settling Defendant and EPA, entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. (“CERCLA”). This letter confirms the Company’s satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to provide the corporate guarantee as financial assurance under the Consent Decree.

*[Fill out the following five paragraphs regarding CERCLA settlements, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write “None” in the space indicated. For each settlement and facility, include its settlement Docket No. or EPA Identification Number, as the case may be, and the financial assurance dollar amount associated with such settlement and/or facility.]*

1. The dollar amount of financial assurance required by Paragraph [\_\_\_\_] of the Consent Decree and covered by the Guarantee is [\$\_\_\_\_\_].
2. The Company is a signatory to the following CERCLA settlements under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$\_\_\_\_\_], and is shown for each such settlement as follows:

3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance through a financial test, including but not limited to hazardous waste Treatment, Storage, and Disposal (“TSD”) facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill (“MSWLF”) facilities under 40 CFR part 258, Underground Injection Control (“UIC”) facilities under 40 CFR part 144, Underground Storage Tank (“UST”) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (“PCB”) storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$\_\_\_\_\_], and is shown for each such facility as follows:

4. The Company guarantees the CERCLA settlement obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties. The total dollar amount of such CERCLA settlement and regulated facility obligations so guaranteed is equal, in the aggregate, to [\$\_\_\_\_\_], and is shown for each such settlement and/or facility as follows:

5. The Company [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (“SEC”) for the Company’s latest fiscal year.

6. The Company’s fiscal year ends on [month, day]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company’s independently audited, year-end financial statements for its latest completed fiscal year, ended [date], and further certify as follows:

A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals [\$\_\_\_\_\_].

\*B. Company’s total liabilities equal [if any portion of the aggregate dollar amount from line A is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines C and D]: [\$\_\_\_\_\_]

\*C. Company’s tangible net worth equals: [\$\_\_\_\_\_]

\*D. Company’s net worth equals: [\$\_\_\_\_\_]

\*E. Company’s current assets equal: [\$\_\_\_\_\_]

\*F. Company’s current liabilities equal: [\$\_\_\_\_\_]

G. Company’s net working capital [line E minus line F] equals: [\$\_\_\_\_\_]

\*H. Sum of Company’s net income plus depreciation, depletion, and amortization equals: [\$\_\_\_\_\_]

\*I. Company’s total assets in the U.S. equal (required only if less than 90% of Company’s assets are located in the U.S.): [\$\_\_\_\_\_]

J. Is line C at least \$10 million? (Yes/No): [ \_\_\_\_ ]

K. Is line C at least 6 times line A? (Yes/No): [ \_\_\_\_ ]

L. Is line G at least 6 times line A? (Yes/No): [ \_\_\_\_ ]

\*M. Are at least 90% of Company's assets located in the U.S.? (Yes/No): [ \_\_\_\_ ]  
If "No," complete line N.

N. Is line I at least 6 times line A? (Yes/No): [ \_\_\_\_ ]

O. Is line B divided by line D less than 2.0? (Yes/No): [ \_\_\_\_ ]

P. Is line H divided by line B greater than 0.1? (Yes/No): [ \_\_\_\_ ]

Q. Is line E divided by line F greater than 1.5? (Yes/No): [ \_\_\_\_ ]

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Name]

\_\_\_\_\_ [Title]

\_\_\_\_\_ [Date]

[NOTARY BLOCK]

## Sample CFO Letter (for Test Alternative 2: Minimum Bond Ratings)

[Guarantor Letterhead]

[Address Block]

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear [\_\_\_\_\_]:

I am the chief financial officer of [name and address of Guarantor] (the “Company”). The Company [is the owner of a direct or indirect controlling interest in] [has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with] [name of Settling Defendant] (the “Settling Defendant”). This letter is in support of the Settling Defendant’s use of a corporate guarantee (the “Guarantee”), to be provided by the Company, to demonstrate financial assurance for the obligations of the Settling Defendant under that certain [Consent Decree (the “Consent Decree”)], dated \_\_\_\_\_, \_\_\_\_\_, Docket No. [\_\_\_\_\_], between the Settling Defendant and EPA, entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 et seq. (“CERCLA”). This letter confirms the Company’s satisfaction of certain financial criteria, as set forth more fully below, that makes the Company eligible to provide the corporate guarantee as financial assurance under the Consent Decree.

*[Fill out the following five paragraphs regarding CERCLA settlements, RCRA facilities, TSCA facilities, SDWA facilities, and associated financial assurance requirements. If the Company has no CERCLA settlement or RCRA/TSCA/SDWA facility obligations that belong in a particular paragraph, write “None” in the space indicated. For each settlement and facility, include its settlement Docket No. or EPA Identification Number, as the case may be, and the financial assurance dollar amount associated with such settlement and/or facility.]*

1. The dollar amount of financial assurance required by Paragraph [\_\_\_\_] of the Consent Decree and covered by the Company’s use of the Guarantee [\$\_\_\_\_\_].
2. The Company is a signatory to the following CERCLA settlements under which the Company is providing financial assurance to EPA through the use of a financial test. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$\_\_\_\_\_], and is shown for each such settlement as follows:
3. The Company is the owner and/or operator of the following facilities for which the Company has demonstrated financial assurance through a financial test, including but not limited

to hazardous waste Treatment, Storage, and Disposal (“TSD”) facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill (“MSWLF”) facilities under 40 CFR part 258, Underground Injection Control (“UIC”) facilities under 40 CFR part 144, Underground Storage Tank (“UST”) facilities under 40 CFR part 280, and Polychlorinated Biphenyl (“PCB”) storage facilities under 40 CFR part 761. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$\_\_\_\_\_], and is shown for each such facility as follows:

4. The Company guarantees the CERCLA settlement obligations and/or the MSWLF, TSD, UIC, UST, PCB, and/or other facility obligations of the following guaranteed parties. The total dollar amount of such CERCLA settlement and regulated facility obligations so guaranteed is equal, in the aggregate, to [\$\_\_\_\_\_], and is shown for each such settlement and/or facility as follows

5. The Company [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (“SEC”) for the Company’s latest fiscal year.

6. The Company’s fiscal year ends on [month, day]. I hereby certify that the figures for the following items marked with an asterisk are derived from the Company’s independently audited, year-end financial statements for its latest completed fiscal year, ended [date], and further certify as follows:

A. The aggregate total of the dollar amounts shown in Paragraphs 1 through 4 above equals [\$\_\_\_\_\_].

B. The current rating of the Company’s senior unsecured debt is [AAA, AA, A, or BBB] as issued by Standard and Poor’s [-or- [Aaa, Aa, A or Baa] as issued by Moody’s Investor Services].

\*C. Company’s tangible net worth equals: [\$\_\_\_\_\_]

\*D. Company’s total assets in the U.S. equal (required only if less than 90% of Company’s assets are located in the U.S.): [\$\_\_\_\_\_]

E. Is line C at least 6 times line A? (Yes/No): [\_\_\_\_\_]

F. Is line C at least \$10 million? (Yes/No): [\_\_\_\_\_]

G. Are at least 90% of Company’s assets located in the U.S.? (Yes/No): [\_\_\_\_\_]  
If “No,” complete line H.

H. Is line D at least 6 times line A? (Yes/No): [\_\_\_\_\_]

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Name]

\_\_\_\_\_ [Title]

\_\_\_\_\_ [Date]

[NOTARY BLOCK]

## **EXHIBIT D**

### **Sample CPA Report (for Test Alternative 1: Financial Ratios)**

#### **[CPA LETTERHEAD]**

#### **INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED UPON PROCEDURES**

To the Board of Directors of Monsanto Company  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167

We have performed the procedures outlined below, which were agreed to by Monsanto Company (the "Company") to assist the Company in confirming selected financial data contained in the attached letter from [\_\_\_\_], the Company's Chief Financial Officer, dated [\_\_\_\_], to the Regional Administrator, United States Environmental Protection Agency, Region 1 (the "CFO Letter"). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of the Company's provision of a corporate guarantee (the "Guarantee") to guarantee the obligations of Pharmacia Corporation ("Settling Defendant") under that certain Consent Decree (the "Consent Decree"), dated \_\_\_\_\_, \_\_\_\_\_, Docket No. [\_\_\_\_], between the Settling Defendant, Bayer CropScience Inc., and EPA. The procedures outlined below were performed solely to assist the Company and the Settling Defendant in complying with the financial assurance requirements contained in the Consent Decree. Management is responsible for the Company's compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, as adopted by the Public Company Accounting Oversight Board. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures that we performed and related findings are as follows: NOTE: THE ACCOUNTING FIRM WILL HAVE TO DISCUSS ITEMS B, C, D, E, F, H, I AND M LISTED AT PARAGRAPH 6 OF THE CFO LETTER

1. We compared the amount included in item [FILL IN THOSE ITEMS IN PARAGRAPH 6 LISTED ABOVE THAT FALL WITHIN THIS CATEGORY] under the caption Alternative II in the letter referred to above with the corresponding amount in the audited consolidated financial statements of the Company as of and for the year ended [month day, year], on which we have issued our report dated [month day, year] (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of Statement of Financial Accounting Standards No. 158, *Employers'*

*Accounting for Defined Benefit Pension and Other Postretirement Benefit Plans an amendment of FASB Statements No. 87, 88, 106 and 132 (R), Financial Accounting Standards Board Interpretation No. 47, Accounting for Conditional Asset Retirement Obligations — an interpretation of FASB Statement No. 143, and Statement of Financial Accounting Standards No. 123 (R), Share-Based Payment*), [additional FASB standards relied upon, as appropriate], and noted that such amount was in agreement when rounded to the nearest million.

2. We recomputed from, or reconciled to, the consolidated financial statements referred to in procedure 1 the information included in items [FILL IN THOSE ITEMS IN PARAGRAPH 6 LISTED ABOVE THAT FALL WITHIN THIS CATEGORY] under Paragraph 6 in the letter referred to above and noted no differences when rounded to millions.

We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the accompanying letter dated [month day, year] Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and management of the Company and the U.S. Environmental Protection Agency Region 1, and is not intended to be and should not be used by anyone other than these specified parties.

## **Sample CPA Report (for Test Alternative 2: Minimum Bond Ratings)**

### **[CPA LETTERHEAD]**

#### **INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED UPON PROCEDURES**

To the Board of Directors of Monsanto Company  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167

We have performed the procedures outlined below, which were agreed to by Monsanto Company (the "Company") to assist the Company in confirming selected financial data contained in the attached letter from [\_\_\_\_], the Company's Chief Financial Officer, dated [\_\_\_\_], to the Regional Administrator, United States Environmental Protection Agency, Region 1 (the "CFO Letter"). We have been advised by the Company that the CFO Letter has been or will be submitted to the United States Environmental Protection Agency ("EPA") in support of the Company's provision of a corporate guarantee (the "Guarantee") to guarantee the obligations of Pharmacia Corporation ("Settling Defendant") under that certain Consent Decree



(the “Consent Decree”), dated \_\_\_\_\_, \_\_\_\_\_, Docket No. [\_\_\_\_\_] , between the Settling Defendant, Bayer CropScience Inc., and EPA. The procedures outlined below were performed solely to assist the Company and the Settling Defendant in complying with the financial assurance requirements contained in the Consent Decree. Management is responsible for the Company’s compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, as adopted by the Public Company Accounting Oversight Board. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures that we performed and related findings are as follows:

1. We compared the amount included in item D under Paragraph 6 in the letter referred to above with the corresponding amount in the audited consolidated financial statements of the Company as of and for the year ended [month day, year], on which we have issued our report dated [month day, year] (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of Statement of Financial Accounting Standards No. 158, *Employers’ Accounting for Defined Benefit Pension and Other Postretirement Benefit Plans an amendment of FASB Statements No. 87, 88, 106 and 132 (R)*, Financial Accounting Standards Board Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations — an interpretation of FASB Statement No. 143*, and Statement of Financial Accounting Standards No. 123 (R), *Share-Based Payment*), [additional FASB standards relied upon, as appropriate], and noted that such amount was in agreement when rounded to the nearest million.
2. We recomputed from, or reconciled to, the consolidated financial statements referred to in procedure 1 the information included in item C under Paragraph 6 in the letter referred to above and noted no differences when rounded to millions.

We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the accompanying letter dated [month day, year]. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Board of Directors and management of the Company and the U.S. Environmental Protection Agency Region 1, and is not intended to be and should not be used by anyone other than these specified parties.